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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,632	10/17/2003	David Vincent Byrne	P69223US0	8911

7590 03/16/2004  
JACOBSON HOLMAN  
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WASHINGTON, DC 20004

EXAMINER

RHEE, JANE J

ART UNIT PAPER NUMBER

1772

DATE MAILED: 03/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/686,632

Applicant(s)

DAVID VINCENT BYRNE

Examiner

Jane J Rhee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As the elongate slot with a number of enlarged holes at discrete locations along the slot, it is ascertain that slots can't have holes because slots themselves are holes.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4,6-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Clarke et al. (3426659).

Clarke et al. discloses a cover for extending over a trench (figure 1 number 12), the cover member comprising a pair of ground engaging portions (figure 1 number 34,33 and 11) bridged by a central trench covering portion (figure 1 number 14), and a trench element depending from the cover member to confine the cover member with respect to a trench (figure 1 number 26), the trench element being movable relative to

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the cover member to facilitate adjustment to a desired width of the trench (figure 1 number 26). Clarke et al. discloses at least two trench elements (figure 1 number 26 and 21). Clarke et al. discloses that the two elements are movable relative to the cover member to facilitate adjustment to a desired width of trench (figure 1 number 26 and 21). Clarke et al. discloses that the cover comprise locking means to releasably lock a trench element in a desired position relative to the cover member (figure 1 number 29 and 24). Clarke et al. discloses that the element is movable between a number of discrete locations (figure 1 number 27 and 22). Clarke et al. discloses wherein the trench element comprises a number of openings to receive a corresponding protrusion on the other of the trench element corresponding to a discrete location (figure 1 number 24 and 22). Clarke et al. discloses that the protrusion provided on the underside of the cover member (figure 1 number 24) and the openings are provided in the trench element (figure 1 number 22). Clarke et al. discloses that the trench element has an elongate slot (figure 1 number 20 is a hollow tube which consist of an elongated slot) with a number of enlarged holes at discrete locations along the slot (figure 1 number 22). Clarke et al. discloses that the protrusion substantially fills a discrete hole in the trench element (figure 1 number 24). Clarke et al. discloses that the protrusion comprises an elongate extension for engagement in the slot in the trench element (figure 1 number 24). Clarke et al. discloses a guide on the underside of the cover (figure 2 number 14). Clarke et al. discloses that the guide is defined by a pair of ribs depending from the underside of the cover, the ribs being spaced apart to received a portion of the trench element therebetween (figure 2 number 14 and 31). Clarke et al. discloses that the

trench element comprises a handle portion to facilitate gripping of the trench element during adjustment (figure 1 number 19). Clarke et al. discloses that the trench elements are oppositely directed (figure 1 number 21 and 26). Clarke et al. discloses that the cover comprises interlink means comprising a first interlink means at one side of the cover member (figure 4 number 32, left side) and a complementary second interlink means at an opposite transverse side of the cover member (figure 4 number 32 right side), one of the first or second interlink means being engagable underneath the other of the first and second interlink means of a like cover on assembly (figure 3 number 13). Clarke et al. discloses that the cover is relatively movable with respect to an adjacent cover to follow the contour of a trench (col. 2 line 15-16). Clarke et al. discloses a cover assembly for a trench, the assembly comprising a plurality of covers (col. 2 lines 15-16).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke et al. in view of Pellegrino et al. (6422784).

Clarke et al. discloses the trench cover described above. Clarke et al. fail to disclose locking means that comprises a fixing pin extendable through an opening in the trench element and an aligned opening in the cover member. Pellegrino et al. teaches locking means that comprises a fixing pin extendable through an opening in the trench

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element and an aligned opening in the cover member (figure 3 number 26,30,12) for the purpose of providing fastening means of the element and the cover member to the road (col. 4 line 36).

Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Clarke et al. with locking means that comprises a fixing pin extendable through an opening in the trench element and an aligned opening in the cover member in order to provide fastening means of the element and the cover member to the road (col. 4 line 36) as taught by Pellegrino et al.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane J Rhee whose telephone number is 571-272-1499. The examiner can normally be reached on M-F.

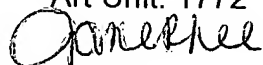
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nasser Ahmad can be reached on 571-272-1487. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and none for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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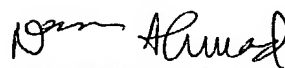
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Jane Rhee

March 3, 2004



NASSER AHMAD  
PRIMARY EXAMINER